IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1362 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C
Versus
BAVALBHAI A GOR

Appearance:
1. Special Civil Application No. 1362 of 1993
MR MD PANDYA for Petitioner
MR MUKESH H RATHOD for Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date of decision: 05/10/2004

ORAL JUDGEMENT

The petitioner-Gujarat State Road Transport Corporation [hereinafter referred to as, "the Corporation"] challenges the judgment and award dated

25th June, 1991 passed by the Labour Court, Ahmedabad in Reference [LCA] No. 2154 of 1986, pursuant to the claim made by the respondent [hereinafter referred to as, "the Workman"] for reinstatement in service.

The workman was employed as the Driver in the Corporation. While in service, on 21st October, 1976, the workman committed murder of his wife. The workman was arrested on 23rd October, 1976 and was sentenced to life imprisonment. Pursuant to his conviction and sentence, by Order dated 7th November, 1977 the workman was dismissed from service with effect from 23rd October, 1976 under Service Regulation-81. After release from imprisonment on 27th March, 1986, the workman claimed employment in the Corporation.

The learned Judge has invoked the jurisdiction conferred by Section 11-A of the Industrial Disputes Act, 1947 [hereinafter referred to as, "the Act"]. The learned Judge was pleased to observe that, "..admittedly, no inquiry was held against the workman.. conviction and dismissal from service will ruin the delinquent workman. The punishment is for a remedy and not for revenge. The concerned workman might have taken the grave action of murdering his wife in a gross angered moment." The Court took note of the fact that the workman was given pardon for his good conduct and behaviour in jail. The Court has directed the Corporation to reemploy the workman as a fresh employee and to count his previous service for the terminal benefits. Feeling aggrieved, the Corporation has preferred the present petition.

Learned advocate Mr. Pandya has submitted that the Labour Court has traversed beyond its jurisdiction. He has submitted that the service of the workman was terminated pursuant to his conviction and sentence in accordance with the statutory regulation. In a case like this, the Labour Court has wrongly invoked the jurisdiction under Section-11A of the Act in directing the Corporation to reemploy the workman. He has submitted that once the action of the Corporation in terminating the service of the workman was found to be legal and valid, the same cannot be set at naught by exercising jurisdiction vested under Section 11-A of the Act. In support thereof, he has relied upon the observations made by the Division Bench of this Court in the matter of Municipal Corporation of the City of Ahmedabad v. Hussainmiya Chandmiya [1987 Lab. IC 1564].

In above matter, the Hon'ble Bench considered the

jurisdiction of the Labour Court exercising power under Section 11-A of the Act, the Hon'ble Bench held that, "..Under Section 11A, the Labour Court can exercise jurisdiction only if the termination of service is found to be 'not justified' but the order of termination cannot be substituted by a lesser punishment only on the basis of misplaced sympathy." Considering the scope of interference by the High Court under Article 227 of the Constitution, the Hon'ble Bench held that, "..It is indeed true that in the case relied upon, the Supreme Court took the view that the supervisory jurisdiction conferred by Article 227 was limited to seeing that an inferior Court or Tribunal functions within the limits of its authority and not to correct an error apparent on the face of the record, much less an error of law. There can, therefore, be no doubt that if we come to the conclusion that the Labour Court had transgressed its authority or jurisdiction conferred by S.11A of the Act, we would be justified in interfering with and setting at naught the award of the Tribunal."

In the present case, as recorded hereinabove, the workman was convicted and sentenced for murdering his wife. Pursuant to the conviction of the workman and the sentence imposed upon him, his service came to be terminated in accordance with the statutory regulation. The action of the Corporation in terminating the service of the workman cannot be said to be not justified. The Labour Court also did not record finding that the termination of service of the workman was illegal or was not justified. In my opinion, the Labour Court has overstepped its jurisdiction in observing that, "the concerned workman might have taken the grave action of murdering his wife in a gross angered moment" and in relying upon the fact that the jail conduct of the delinquent was good and that he was given pardon. I believe the Labour Court has erred in relying upon the extraneous and irrelevant materials for invoking jurisdiction vested under Section 11-A of the Act and in ordering reemployment of the workman. The workman has been further rewarded by direction to count his earlier service for the purposes of terminal benefits.

In view of the above discussion, the petition is allowed. The impugned judgment and order dated 25th June, 1991 passed by the Labour Court, Ahmedabad in Reference [LCA] No. 2154 of 1986 is quashed and set-aside. The claim made by the workman is rejected. Rule is made absolute. The parties shall bear their own costs.

{Miss R.M Doshit, J.}

Prakash*